C.F. 71 & 72.

1933.

Department of Land Revenue

OFFICE Board of Revenue

STATION Madras.

Mis No. 1616

1616

Dated 10.6.33

A 3686/32

To whom sent	Date	Initial
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(SUBJECT.)

Village officers - (S. Kanara) - Karkal Tq -
Belwai Vee - Headman - Appointment -
Padmanabha Shetty - Appeal - Remanded
to Collector for fresh enquiry.

* Not to be filled in in the case of permanent records.

BOARD OF REVENUE
7- NOV 1932
LAND REVENUE AND SETTLEMENT

Before the Commissioners of the Board of Revenue,

Madras.

No 174 / No 52 in the Geneological tree (Q)

Padmanabha Shetty, nephew of Potail Thimmavva Shetty, Belvai Village, Karkal Taluk.) Petitioner.

Vs

No 159-00 -

Naraina Shetty nephew of Poalpu Shetty, Belvai Village, Karkal Taluk) Counter Petitioner-

Petitioner begs leave to submit this petition to this Honourable Board of Revenue against the order of the Collector of South Kanara in R.Dis. 5914-32 dated 9--8--32 appointing the Counter-petitioner as permanent Potail of Belvai village of Karkal Taluq, on the following among other grounds:--

pp 17-21 C+

1. The Potailship of Belvai village was rightly conferred on Vittal Shetty by right of succession, by the Sub Collector, Coondapoor Division in his R.Dis. 887-32 dated 3--4--32

No 54 in (Q)

2. In appeal preferred by the counter-petitioner against the Sub Collector's order above mentioned,

the Collector of South Kanara without notice to the members of the family and on the bare appeal petition of the counter petitioner was pleased to set aside the Sub Collector's Order and appoint the counter petitioner as the permanent Potail of Belvai village.

3. The reasons assigned for the appointment of the counter petitioner appear to be (1) that both the counter petitioner and Sub Collector's appointee are members of the same family; (2) that the Sub Collector's appointee was not a passed candidate at the time the vacancy arose.(3) that the counter petitioner is the next in succession according to the Advocate General's opinion; (4) that the counter petitioner was already qualified and acting at the time; (5) that the Sub Collector's appointee did not want the potailship in preference to the counter petitioner and (6) that Vittal Shetty is no resident of the village.

4. In reference to the above points, the petitioner begs to state as follows:;

(1) That both the counter petitioner and Vittal Shetty are members of the same family, is not denied. But the question is as to who is the best entitled to succeed to the post. Here, as between the

these two. Vittal Shetty being the direct nephew of the deceased Potail Thimmayya Shetty, was appointed by the Sub Collector, after due enquiry. The counter petitioner can have no chance of selection in the face of the members of the direct branch of the deceased. The counter petitioner is ~~an offshoot~~ member of quite a different branch.

(2) That Vittal Shetty had not passed the requisite test at the time of the vacancy, would not operate as a bar to succeed to the office. In such cases there is provision made to test the ability of such claimants by means of oral examination; and Vittal Shetty was put to the test and declared as passed at the oral examination by the Sub Collector.

(3) According to the Advocate General's dictum, the counter petitioner cannot be ushered into the field as next in succession. The line of succession cannot change. The succession is traced in the direct line of the last holder. The failure of candidates in the direct branch, would alone necessitate the calling in of members of the br[illegible] to it. To bring in the Counter petitioner as entitled to get the post, is as good as taking a retrograde step, which the rules forbid. It is only possible in the

absence -- members in the direct line. The Advocate General's opinion in determining the succession in the case of the Aliyasanthana family, is this. In answer to the question as to who is the nearest rightful heir to a deceased headman, the Advocate General states that the eldest of the mother's male descendants succeed. This answer of the Advocate General is clear enough.

The Advocate General has also given as his opinion that succession is not of the individual but of a group. The Collector may have construed the word "group" as embracing the entire family, irrespective of nearness or remoteness of the --- several branches. But the word "group" is according to the Advocate General's opinion, restricted to the last holder's mother's descendants. Vittal Shetty belongs to this group, as well as the petitioner. Besides, the counter-petitioner's branch is a separate group with no concern in the joint -- family affairs and li[illegible]eparate from the family house, by virtue of an agreement which is tantamount to a panchi partition.

(4) The mere educational qualification of the counter petitioner would not confer on him the right of succession, as against the nearest members, passed or otherwise.

The mere incident that counter petitioner was acting at the time, would not entitle him to get into the permanent vacancy. The deceased potail collapsed suddenly and unexpectedly and the counter-petitioner who was on the watch for such an event, happened to be on the spot and seized the opportunity of taking charge of the office as temporary and emergency measure, at the instance of the Reevenue Inspector. This was nothing but a chance.

(5) Because Vittal Shetty didnot want the Potailship in preference to the counter petitioner, there is no justification for choosing the counter petitioner as best entitled to the Potailship. Vittal Shetty has no discretionery powers except to claim the Potailship or to leave the matter as it is for his kith and kin to claim it.

(6) The question of non-residence would arise on o r at the time of joining the post; and that is the reason why the Sub Collector allowed him three months' time to shift his residence to the village. His residence was thus no disqualification.

5. A perusal of the geneology (copy enclosed) will show that the counter petitioner is a member of the remote branch, and cannot claim the potailship in

preference to the legal heirs. His term must come only after the members of the nearest branch of the deceased Potail are exhausted. In the present case, Vittal Shetty is the seniormost member of the direct branch, next to petitioner's brother Mahabala Shetty. But Mahabala Shetty withdrew, in favour of Vittal Shetty, because he was already Potail of Mannabettu village in Mangalore Taluq. If Vittal Shetty were not in earnest to fight for the Potailship, it is open to the petitioner to lay claim to it. Under any circumstances, the counter petitioner is not the person to hold the office vide B.P.69. It is said there that the nearer ascendants and ~~their~~ descendants exclude the more remote ascendants and their descendants and that the last holder's descendants should be exhausted before his brother and their descendants can succeed.

6. When the counter petitioner's appeal was filed, and when it was intended to be upheld, all the members of the family should have been served with notices, for the correct understanding of the status and title of each to the office, which is hereditary and the joint family concern. What has happened is that the case has been disposed of on the onesided version of the counter petitioner who had disguised the facts and claimed the post as next of kin to the deceased Potail.

7. Realising the attitude of Vittal Shetty in that he was waiving his right in favour of the counter -- petitioner, the petitioner submitted his claim petition to the Sub Collector on 30-3-32 for the potailship. He was assured that his claim would be considered in case Vittal Shetty should be found to play into the hands of the Counter-petitioner.

8. The appeal preferred by the Counter-petitioner is bristling with misrepresentations and falsehood. No member of the family had occasion to oppose him, and so he gained his end by unfair means.

9. The counter-petitioner speaks of his title as superior to that of Vittal Shetty and others of the direct branch, on the ground that he belongs to senior branch and is senior in age. This argument is untenab as has been explained above. The potailship ought to descend to the last holder's direct nephews and to the senior in age among them. Thus Vittal Shetty, with th consent of Mahabala Shetty, was appointed by the Sub Collector.

10. Th- ---nter-petitioner in his appeal, states that he was taken into confidence by the deceased Potail and that he had been selected for the acting vacancies. He f---ther says that he used to hold the acting post since 1925. Petitioner submitted that this is a lie.

Because, in the years 1924 to 1926, the deceased's brother Venkappa shetty, though unpassed, was nominated. At other times, one Bhujanga Shetty, who belongs to the family and who is qualified, was - nominated, because of the hostile attitude of the Counter-petitioner towards the deceased Potel, and also on account of his mischievous and untrustworthy conduct. When the deceased Potail last took leave in October 1930 for 15 days, on substitute of the aforesaid Bhujanga Shetty, the Counter petitioner prevailed upon the Tahsildar to set aside that nomination and appoint him. Whereupon, the deceased Potail appealed to the Sub Collector who was pleased to order as follows:- "Petitioner is informed that when the vacancy actually arises, appointment will be made on a full consideration of all the first claims" (vide Sub Collector's D.Dis No.7590-30 dated 7-2-31) And when the vacancy actually arose, by the death of the Potail, the Sub Collector, on full consideration of all the first claims, appointed Vittal Shetty. In these circumstances, the Counter-petitioner's statement that he was the confidant of the deceased Potail and that he was nominated for the acting - vacancies &c is contrary to facts.

n his order dated L.Dis.4341/32 dated 26--8--32 passed the following remarks:-"The explanation of the Potail for the delay in crediting the Kist collections, cannot be acceoted. He is awarded a blackmark and warned to be careful in future".

(f) Notwuthstanding he again resumed the game. The kist amount of Rs.64/- handed to him on 12-9-32 with a challan for immediate remittance, by the Revenue Inspector, was remitted by him only on 27--9--32 viz, Challan No. 15/27--9--32.

13. It will thus be seen that the Counter petitioner is a rowdy and unreliable person and dangerous too.

14 In the circumstances stated above, the appoint ment of the counter petitioner has to be cancelled

15. Petitioner prays that on a kind consideration of the submissions this Honourable Boardof Revenue may be pleased to admit this petition and set aside the order passed in the case and confer the post on the petitioner or pass such other order as this Honourable Board deems fit.

For which act of benevolence he shall be grateful.

Lakkappa k

Counsel for Petitioner.

Enclosures:—

Order of the Collector of South Kanara
in S. Dist. 5914 – 32. dated 9.6.32.

Family Genealogical Tree.

The genealogical table may be
returned to me after the case is over

B. Lakkappa Rao
Counsel for Petitioner.

Encl- A. 3686/32

p.c Encl- calling for C.7. labels of the value of 2s 1-4-0 and a stamped and authenticated copy of the order of the R.D.O. Time 12-12-32 Address p 15 ct

8/11/32

1st Asst

I.C.S.

8/11/32

12.

(1908ನೇ ಇಸವಿ Vನೇ ಆಕ್ಟಿನ IIIನೇ ಆರ್ಡರಿನ 4ನೇ ಕಲಂ ಪ್ರಕಾರ)

ಲೆಫ್ಟಿನೆಂಟ್ ಕಡೆ **ವಕಾಲತ್‌ನಾಮೆ.**

ಮಹಾರಾಜಶ್ರೀ

ದಕ್ಷಿಣ ಕನ್ನಡಾ Before the Hon'ble Commissioners of the Board of Revenue ಕೋರ್ಟಿನಲ್ಲಿ. Chepauk, Madras

ನಂ 193 ನೇ ಇಸವಿ ತಾರೀಕು ಲ್ಲು

K. Padmanabha Shethy Petr

V/s

Narima Sheth Respondent

ನಾನು ಕೆ. ಪದ್ಮನಾಭ ಶೆಟ್ಟಿ ವಕೀಲ ಬಂಕ್ಷಪ್ಪ ಶೆಟ್ಟಿಗಳವರೆ ಬರಿಸಿಕೊಟ್ಟ ವಕಾಲತ್ ನಾಮೆ.

ಮೇಲ್ಕಂಡ ವ್ಯವಹರಣೆಯಲ್ಲಿ ನನ್ನ ಕಡೆಯಿಂದ ಹಾಜರಾಗಿ ಆದರಲ್ಲಿ ವ್ಯವಹರಿಸುವರೆಯೂ ಮತ್ತು ಆದರಲ್ಲಿ ಕೊಡೋಣಾದ ಯಾ ಕೊಡೋಣಾಗುವ ಯಾವದೊಂದು ಡಿಕ್ರಿಯ ಯಾ ಹುಕುಮಿನ ಅಮಲ್ ಜಾರಿ ಅರ್ಜಿ ಸಮ್ಮಂಧ ನಡಿಸೋಣಾಗುವ ಯಾವತ್ತು ವ್ಯವಹರಣೆಗಳನ್ನು ನಡಿಸುವರೆಯೂ ಮತ್ತು ಮೇಲಿನ ಯಾವತ್ತು ವ್ಯವಹರಣೆಗಳಲ್ಲಿ ಕೋರ್ಟಿನವರಿಂದ ಕೊಡೋಣಾದ ಎಲ್ಲಾ ಡಿಕ್ರಿಗಳು ಯಾ ಹುಕುಂಗಳು ಪೂರ್ಣ ಸಮಾಧಾನ ಯಾ ರಾಜಿಯಿಂದ ತೀರ್ಮಾನ ಆಗುವ ವರೇಗೆ ಯಾವತ್ತು ಮಿಸಲೇನಿಯಸ್ * ವ್ಯವಹರಣೆಗಳಲ್ಲಿ ನನ್ನ ಬಗ್ಯೆ ಹಾಜರಾಗಿ ವ್ಯವಹರಿಸುವರೆಯೂ ಮತ್ತು ಕೋರ್ಟಿನಲ್ಲಿ ನನ್ನ ಕಡೆಯಿಂದ ಹಾಜರಾದ ದಸ್ತಾವೇಜುಗಳನ್ನು ವಾಪಸ್ ಪಡಕೊಳ್ಳುವರೆಯೂ ವ ಸದರಿ ವ್ಯಾಜ್ಯ ಯಾ ವ್ಯವಹರಣೆಯಲ್ಲಿ ನನಗೆ ಬರತಕ್ಕ ಹಣಗಳನ್ನು ಪಡಕೊಳ್ಳುವರೆಯೂ ನಿಮಗೆ ನನ್ನ ಬಗ್ಯೆ ವಕೀಲರಾಗಿ ನೇಮಿಸಿ ಈ ಮೂಲಕ ಪೂರ್ಣ ಅಧಿಕಾರ ಕೊಟ್ಟಿದ್ದೇನೆ ಎಂತ ನನ್ನ ಕೈವಪ್ಪಿತ ಹಾಕಿ ಬರಕೊಟ್ಟ ವಕಾಲತ್‌ನಾಮೆ.

K. Padmanabha Shethy

193

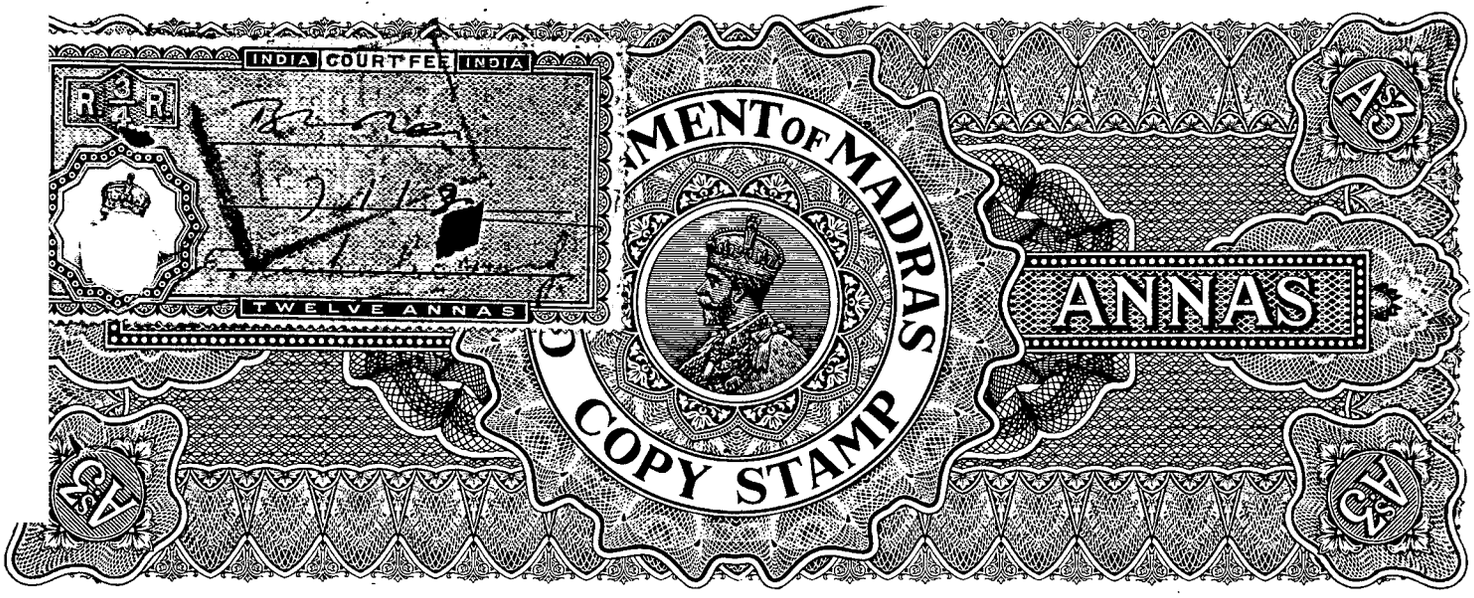
ADDRESS FOR SERVICE OF THE SAID VAKIL IS

B. Lakshmipathi Rao
Advocate
Chartered Bank Building
Top Floor
Madras

Pleader

ಈ ವಕಾಲತ್ತು ಬರಕೊಂಡ ಮೇಲೆ ಹೆಸರು ಕಾಣಿಸಿದವರಿಗೆ ಆವ ತಿಳಿಯುವ ಕನ್ನಡ ಭಾಷೆಯಲ್ಲಿ ಓದಿ ಹೇಳಿದಲ್ಲಿ ಸರಿ ಉಂಟೆಂತ ನನ್ನ ಮುಂದೆ ಒಪ್ಪಿ ದೃಢಪಡಿಸಿ ಇದಕ್ಕೆ ದಸ್ಕತು ಮಾಡಿದ ತಾರೀಕು 18-10-32

B. Mahabala Rai
Municipal Councillor
Bangalore.



6-4-0
Wlsa

R. Dis. No. 5914-32

Proceedings of the Collector of South Kanara, Mangalore

Dated 9th August 1932.

Present: Khan Bahadur J. Hussain Bar-at-Law

Village officers – Karkal Taluk – Belwai Village – Headman – permanent Vacancy – Appointment – Appeal – Narain Shetty B – orders passed.

1) Appeal petition dated 26.6.1932 of B. Narain Shetty, Acting Potail of Belwai Village, Karkal Taluk.

(2) Coondapur Sub-Collector's R. Dis 4144-32 dated 14-7-1932.

(3) Coondapur Sub-Collector's order R. Dis 887-32 dated 3-4-32.

and (4) The connected records.

This is an appeal against the appointment of Vittal Shetty, the respondent, as permanent Potail of Belwai Village. The appellant and the respondent are members of the same family which is governed by the Aliyasanthana

GOVERNMENT OF MADRAS
COPY STAMP
THREE ANNAS

law of inheritance.

2 Firstly, the respondent through the next to succeed the deceased Pot-ail, was not qualified at the time the vacancy arose. Secondly, the appellant, the next in the line of succession according to the Advocate General's (Remarks) opinion (P) by reason also of the fact that he was qualified was already acting as Pot-ail at the time. Thirdly, the respondent himself did not want the Pot-ailship in preference to the appellant. The respondent has also no residence in the Village but is a permanent resident of a different Village in another Taluk and his appointment was made by the Sub-Collector subject to his keeping permanent residence in the Village.

3 In view of the above, there was no reason to disturb appellant and appoint the respondent after an oral test. In the result, the Sub-Collector's order is set aside and the appellant appointed permanent Pot-ail of Pelmai Village.

GOVERNMENT OF MADRAS
COPY STAMP
THREE ANNAS

J. Hussain

9.8.32

Collector of S. Kanara.

Error to one only -

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Application No. 227 for copy received	} on	7-9-32
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Copy ready	"	14.9.32
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Total words = 285

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14/9/32

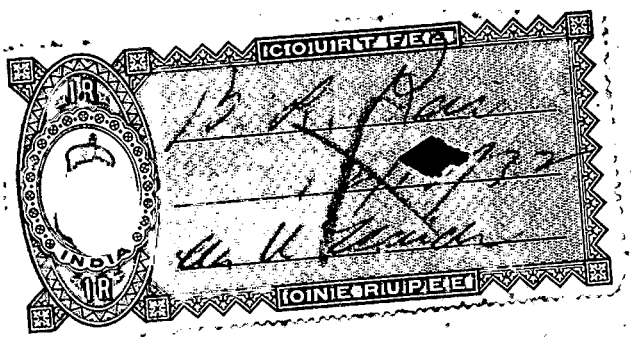
Yours truly
Deputy Collector

A-4107 Rs 1-12-0

ce of the Board of Revenue
and Settlement Chepauk.

As per your card dated 8.11.32 (No. A 3686/32). I am herewith enclosing stamped and certified copy of the order of the Rev. Dr. Officer and also court fee labels of the value of Rs 1-4-0 in Mr. Padmanavna Sethy's petition to this Hon'ble Board:

B. Lakkappa Rau
Advocate for petitioner
Chartered Bank Buildings
Top Floor
Madras.



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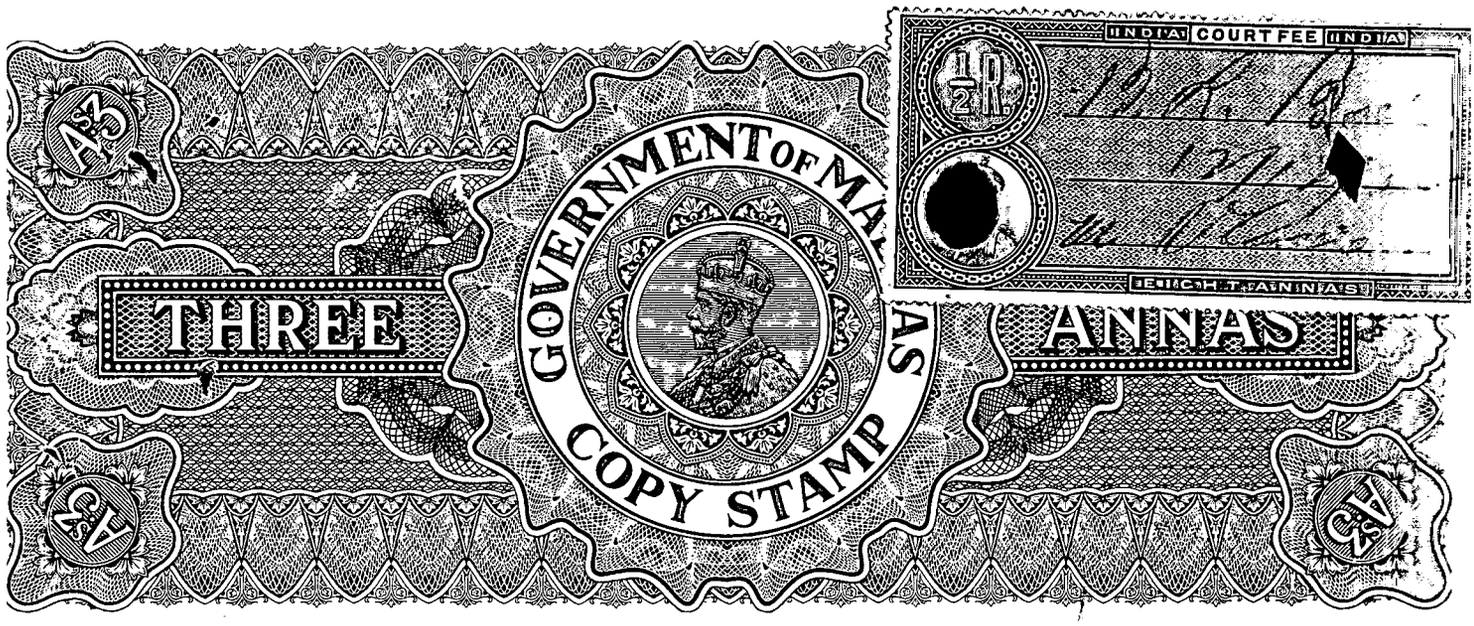


R. Dis 887-32

Proceedings of the Sub-Collector, Coondapoor Division, dated 8.4.32.

N. S. Arunachalam Esqr., M.A., I.C.S.

Village Officers - Karkal Taluk - Belvai village - Potelship Permanent appointment - Ordered.

Karkal Tahsildar's Ref A3-3007-31, dated 9-2-32.

The potailship of Belvai village has fallen vacant on account of the death of the permanent potail Thimmappa Shetty. In the family of the deceased potail the next heir entitled to succeed the deceased is his brother Kote Shetty aged 53. He however does not want to be appointed as potail. The succession has thus devolved on Vittal Shetty, the next (eldest) seniormost heir who claims the potailship. Vittal Shetty not having passed the V.O.S. test was orally examined by me and found fit to discharge the duties of a potail. He is therefore exempted from passing the V.O.S. test and appointed as permanent potail of the village.

2. Vittal Shetty should within 3 months of the receipt of this order by him keep permanent residence

(1) K

R. F. XXII-A-19—23,004—15-3-32 (

Subject.

FOR MEMBER. Village officers - Canara - Karkal Tq: Belvai Vge - Headman - Appointment - Padmanabha Shetty - Appeal - Notice to Counter Petitioners.

READ AGAIN B. P. No. _____, dated _____ 193

" " " _____, " _____ 193

READ ALSO

Register No. _____ From the A. 3686/32 & No. 1-11 Cf, dated Q 193

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193

RESOLUTION. Refer A. 3686/32/1 & 11-1-33 No. _____, dated _____ 193

Forwarded to the Collector of South Kanara for submiss of the records with any remarks which he considers necessary regarding allegatio in the petition which are n clearly dealt with in the records.

p. 25 Cf Vol 47

2). The rev. appt. officer appointed Vittal Shetty, the direct nephew of the last office holder after giving him the benefit of the oral test, but this appointm was cancelled by the Collec-

p. 19 Cf

of the grounds for setting aside
i order of the Rev. Divl. Officer
as that Narayana Shetty was
ext in the line of succession
ecording to the Advocate
neral's opinion from the
nealogical tree fu
y the petitioner, the Board
bserves that Vittal Shetty
d Padmanabha Shetty are
escendants of Thimmayya
Shetty's mother Parvathi
hile Narayana Shetty is the
escendant of Timmaji
sister of Parvathi. ie descendan
f the last office hold
grandmother. In selecting
the groups to succeed accord
to the Adv: General's opinion
preference should be given
o the mother's descendants
first before considering the
escendants of the grandmothe
As Vittal Shetty and Padmana
Shetty are nearer Timmaya
the last office holder
Shetty than Narayana Shetty,
the Board is of opinion that
the Collector's order is

~~opposition against~~ opposed to the opinion of the Advocate General and so cannot be ~~approved~~ upheld. If Vittal Shetty's appointment is considered undesirable, or if he does not want the office of headman the next in order of succession viz Padmanabha Shetty should have been appointed if necessary after an oral examination.

The Board therefore proposes to cancel the Collector's order D. Dis 5914-32 of 9-8-32 and ~~direct the Collector~~ to instruct him to decide the case afresh in the light of the above remarks. The Collector is requested to issue notices to the Contesting ~~Narayan Shetty and Vittal Shetty~~ to show cause in writing within one month why the proposed order should not issue and to submit his statements to the Board with his remarks

K.S.
7/1/33
10/1/33

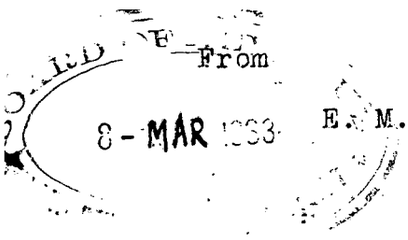
South Kanara
With the petition in original (to be sent with reply).
① pp 1 – 28 cf and flag ②

RP187

D. Dis. 395--33.

South Kanara Collector's Office,
Camp: Kasaragod, dated 3rd Mar. 1933.

A 793



From

E. M. Gawne, Esq, I.C.S.,
Collector of South Kanara.

To

The Secretary to the Board,
Land Revenue & Settlement,
Madras.

S i r,

Village Officers:-- Headman--Karkal Taluk--Beluvai villages-Appointment of Narayana Shetty--Appeal petition of Padmanabha Shetty--Notice to counter-petitioner--remarks offered.

pp 29-31 cf Board's Ref. A No. 3686-32-1 dated 11th January 1933.

The history of the case is briefly as follows:- On the death of Thimmayya Shetty, the last office holder, on 8th March 1931 enquiry was started and the Sub Collector appointed Vittal Shetty (No. 14 in the genealogical table enclosed), the direct nephew of the last holder, after orally examining him and exempting him from the written test. Narayana Shetty, the Board's counter-petitioner (No. 9) appealed to the Collector. The Collector Mr. Hussain confirmed the counter-petitioner for the reasons stated in his order D.Dis. 5914-32 dated 9.8.32. The Board's appellant is No. 22 and is more distant in relationship to the last holder than Nos. 14 and 15, but both Nos. 14 and 15 withdrew opposition to the appointment of No 9.

2. In regard to the allegations contained in the appeal petition to the Board, the following remarks are offered:-

2.—Paras 10 and 12:- The counter-petitioner(No. 9)was appointed to act as potail in 1925 for the first time as Venkappa Shetty the substitute proposed by the permanent potail was not qualified. He was acting off and on since then in leave vacancies but he had not the consent of the permanent potail, the last office holder. It is true that Bhujanga [illegible] Shetty, a qualified man, was nominated twice by the permanent potail in 1930 and 1931 but the counter-petitioner was preferred as he had acted in the post on several occasions since 1925 and had gained experience. It is true that the permanent potail even appealed to the Sub Collector against the acting appointment of the counter-petitioner (D.Dis.7590-30).

Para 12 (d):- The records of L.Dis. 3482-32 show that the counter-petitioner's report was found on enquiry made through the police to be not true.

Para 12 (e):- It is a fact that the counter-petitioner was awarded a black mark for delay in crediting the kist collection. (L.Dis. 4341--32).

Para 12 (f):- The challan dated 27.9.32 referred to is enclosed. There is nothing in the challan to show that the amount was entrusted to the counter-petitioner on 12.9.32 by the Revenue Inspector.

The other allegations raised in the petition do not call for remarks. Further the allegations made against the counter-petitioner do not appear to be of a serious nature to debar him from holding the post.

3. In response to the notice issued to the counter-petitioner he has submitted a petition enclosed as to why his appointment should not be cancelled. Of the grounds urged by him, the one that deserves consideration is that he is qualified. The records show that all the direct heirs of the [illegible] holder Nos. 14, 15, 22 and 24. (No.19 being the potail of Mennabettu village) were all unqualified at the time the vacancy arose. The reasons given by Mr. Hussain in points 1 and 3 in para 2 of his order D.Dis 5514-32 dated 9.8.32 were good grounds for appointing the counter-petitioner. I may add that it is doubted whether when a qualified man is available, there is need as the Board observes, to give an

oral test to an unqualified man, because he is nearer in succession. Further, as the passing of a man by an oral test is an executive order, it must be within the discretion of the Collector to set aside such an order passed by the Revenue Divisional Officer and prefer a man who is a passed hand. It does not appear therefore that Padmanabha Shetty (No. 22) can succeed since he is not qualified and has no right to claim to be passed by an oral test.

4. Further, the counter-petitioner urges that if he is not to have the post, the rightful claimant is No.14 and next No.15 and that after these two persons only the claims of No. 22 can be considered. Both Nos. 14 and 15 acquiesce in the appointment of the counter petitioner and did not appeal to the Board against that appointment, but they do not concede that No. 22 in their group and a younger generation, should be preferred to either of them. Their petition is enclosed. They are, no doubt, nearer in succession to the last holder than the Board's appellant. However, as all these persons were unqualified, I consider that the counter-petitioner was rightly appointed to the post.

5. The appeal petition and the genealogical table received from the Board, the counter-petitioner's statement, the joint petition of Vittal Shetty and Kunhappa Shetty and also the records noted in the margin with a genealogical table in English are enclosed.

Your obedient servant

Collector.

ffice D.Dis. 5914--32. (W)

2 Coondapur Sub Collr's R.Dis. 887-32 (F)

3. --do-- L.Dis. 4341-32. → (Q)

4 --do-- D.Dis 7590-30. → (S)

5. Kakrkal Tahr's L.Dis.3482-32 → (T)

6. L.Dis.6421-32 (H)

7. Challan dated 27.9.[illegible] Rs.64-11-8. (L)

A-S(L·R) **Subject.** R. F. XXII-A-19—23,004—15-3-32 (6)

I R MEMBER. Village — (South Kanara) — Kasaragod
Belwai Uge - Headman - Appointment -
Padmanabha Shetty - Appeal.

READ AGAIN B. P. No. _____, dated _____ 193

" " " _____, " _____ 193

READ ALSO :-

Register No. _____, From the A 793/33 p/p No. 33 - 35 dated Q 193

" " _____, " " _____, " _____, " _____ 193

" " _____, " " _____, " _____, " _____ 193.

RESOLUTION. Refer No. A 3686/32/2, dated _____ 193

The counter petitioner's statement & the joint petition of Vittal Shetty and Kunhappa Shetty referred in para 5 of the Collector's report have not been received in this office. The Collector is requested to submit them immediate

KS.
10.3.33
pm 10.3.

11.3.33.

TO
The Collector of
S. Kanara

Remind Coll 25 - 3 - 33

Enclosures of South Kanara Collector's letter, D.Dis. No.395-33, dated 3rd March 1933.

To

The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

The Collector of South Kanara.

B. Narayana Shetty, Potail of Beluwai) village, Karkal Taluk.) Petitioner.

Whereas petitioner has been asked to show cause why his appointment to the Beluwai potailship should not be cancelled and another appointment made after a fresh enquiry, the petitioner begs to submit as follows:-

1. The petitioner belongs to the well-known family known as "Puttige Guttu" in Beluwai village which lays claim to about 6 or 7 potailships viz - (1) Puttige, (2) Beluwai, (3) Mennabettu, (4) Thodar, (5) Kuchur, (6) Badaga-yedapadavu, (7) Paladka.

2. As there were so many potailships, and as in olden days aspirants were few and far between, the potailships were filled up as they fell vacant, indiscriminately, at the instance of the ejman without any regard to any rights of succession of any one particular member or branch.

3. This was exactly the case in this particular instance. The last holder was Thimmayya Shetty, and before him, one Chinnayya Shetty, was the potail. At the time, Chinnayya Shetty died, one Kudethoor Ramanna Shetty ~~are~~ was the ejman of the family. His was a towering personality and he died very much to enhance the reputation of the family. His word was law to the members. Hence, at his bidding, Thimmayya Shetty succeeded to the potailship, though according to the rules of succession, the potailship should have gone to one Vodipu Shetty who was older than Thimmaya Shetty. Both, no doubt, were nephews of chinnaya Shetty but by different sisters.

4. This arrangement was acquiesced ~~why~~ in by the other membe: as there was no courage or wisdom ~~on~~ with the others to challenge the propriety of the actions of the aforesaid ejman, Kudethur

Ramanna Shetty, specially because they were all well-intentioned.

5. This deflection in the potailship made all the difference for the petitioner. The petitioner is the direct nephew of Vodipu Shetty, and if Vodipu Shetty had succeeded to the potailship, in the usual course, the petitioner's claims would not have been superseded in any way.

6. Now that Ramanna Shetty is dead, his commending influence is also gone, and his demise has created a void in the family which has not been filled by anybody else.

7. With his disappearance, everybody began to assert his own rights and the injustice of the thing now becomes apparent

8. Intentionally or unintentionally during the time of Ramanna Shetty, two potailships ~~cause~~ came to be vested in two brothers viz., Thimmayya Shetty aforesaid and his younger brother ~~Koti~~ Shetty. The former was the Beluwai potail and the latter was the Mennabettu potail.

9. Koti Shetty resigned his potailship and this went to Mahabala Shetty, the senior-most of the nephews of ~~brother~~ both Koti Shetty and Thimmayya Shetty, who are five in number.

10. When the next vacancy arose on the death of Thimmaya Shetty, again the nephews viz - the remaining four urged their claims.

p139 of 67 (F)

11. The Revenue Divisional Officer appointed Vittal Shetty, the senior-most among them.

pp13-14 of (W)

12. But the Collector was pleased on grounds of equity to appoint the petitioner.

13. The Board has now proposed to cancel this order, presumably because the real history and grievance of the petitioner has not been brought to their notice.

14. The injustice of the matter becomes apparent when

the rule is enforced to the exclusion of all equitable considerations. Is it not injustice to give two potailships to one branch ~~also~~ alone in a big family which consists of numerous branches? More so, when undue advantage is now taken by an undue assertion of rights owing to a certain position created by a deflection in the matter of succession to the potailship by the former ejman who was doing it on equitable considerations.

15. This is really a case in which the Collector may reasonably interfere with the operation of the usual rule with a view to set-right the course of succession, which was once deflected, on equitable grounds.

16. Besides, the petitioner is a person who has passed the tests and is fully qualified to hold the post.

17. More than all, it may be noted that the last holder Thimmaya Shetty, who was sickly, nominated the petitioner and his substitute and from the year 1925 till his death in 1931 and thereafter it was the petitioner who has been acting as the potail of Beluwai village.

18. One more circumstance to show that the potailship should go to the petitioner. The family has a house in Beluwai and the petitioner lives in that house with other family members who are apportioned to that house. The nephews of Thimmaya Shetty or Koti Shetty have never lived in that house at all. They live in altogether different villages.

19. Even Kudethur Ramanna Shetty who was responsible for the potailship going to Thimmayya Shetty insisted upon Thimmaya Shetty, residing in Beluwai house during his potailship, thus indicating that the potailship belonged to that house. Thus it was that Thimmaya Shetty, alone of his branch came to reside in Boluwai.

20. All these circumstances slearly show that residence is also an important question in this case and practically ~~presumably~~

determines to ~~whoever~~ whom the potailship should go.

21. For all these reasons, the petitioner submits that if his appointment is to be cancelled it will be ~~during~~ doing an ~~amount~~ act of injustice to him and to his claims.

22. In fact, his claims are being recognised by Vittal Shetty, the person appointed to the potailship by the Sub Collector, Coondapoor, and his brother Kunhappa Shetty who is also senior to Padmanabha Shetty, the person who had approached ~~to~~ the Board.

23. That is the reason why Vittal Shetty did not move the Board as against the order of the Collector.

24. Of course, if the petitioner is not to have it, then the rightful claimant by seniority is Vittal Shetty and next to him comes Kunhappa Shetty and it is only after these two, Padmanabha's Shetty's claims can be considered.

25. However, the Collector can easily see that equities are all in favour of the petitioner in this case which must be deemed a fit one for favourable recommendation by him to the Board for a reconsideration of the order of the Collector though not for the reasons stated in the order but for reasons which may now be differently stated.

The petitioner therefore prays that Your Honour may be pleased to recommend to the Board for the restoration of the order of the Collector now proposed to be cancelled.

9th February 1933.

V Padmanabha Shetty
& Bro.

PETITIONER.

(1908ನೇ ಇಸವಿ Vನೇ ಆಕ್ಟಿನ IIIನೇ ಆರ್ಡರಿನ 4ನೇ ಕಲಂ ಪ್ರಕಾರ)

Petr. ಕಡೆ **ವಕಾಲತ್ ನಾಮೆ.**

ಮಹಾರಾಜೇಶ್ರೀ Rao Bahadur M. M. Suvarna. Avl.,
B.A.B.L., Advocate, Mangalore.

ದಕ್ಷಿಣ ಕನ್ನಡಾ Collector — ಕೋರ್ಟಿನಲ್ಲಿ.

ನಂಬರು——— 193

B. Narayana Shetty — Petr.

ಸಂ 1933 ನೇ ಇಸವಿ February ತಾರೀಕು 9 ಲ್ಲು The

above named petitioner, B. Narayana Shetty, Patail of Belluvai Village, Karkal Tq —

ಬರಿಸಿಕೊಟ್ಟ ವಕಾಲತ್ ನಾಮೆ.

ಮೆಲ್ಕಂಡ ವ್ಯವಹರಣೆಯಲ್ಲಿನ ನನ್ನ ಕಡೆಯಿಂದ ಹಾಜರಾಗಿ ಅದರಲ್ಲಿ ವ್ಯವಹರಿಸುವರೆಯೂ ಮತ್ತು ಅದರಲ್ಲಿ ಕೊಡೋಣಾದ ಯಾ ಕೊಡೋಣಾಗುವ ಯಾವದೊಂದು ಡಿಕ್ರಿಯ ಯಾ ಹುಕುಮಿನ ಅಮಲ್ ಜಾರಿ ಅರ್ಜಿ ಸಮ್ಮಂಧ ನಡಿಸೋಣಾಗುವ ಯಾವತ್ತು ವ್ಯವಹರಣೆಗಳನ್ನು ನಡಿಸುವರೆಯೂ ಮತ್ತು ಮೇಲಿನ ಯಾವತ್ತು ವ್ಯವಹರಣೆಗಳಲ್ಲಿ ಕೋರ್ಟಿನವರಿಂದ ಕೊಡೋಣಾದ ಎಲ್ಲಾ ಡಿಕ್ರಿಗಳು ಯಾ ಹುಕುಂಗಳು ಪೂರ್ಣ ಸಮಾಧಾನ ಯಾ ರಾಜಿಯಿಂದ ತೀರ್ಮಾನ ಆಗುವ ವರೇಗೆ ಯಾವತ್ತು ಮಿಸಲೇನಿಯಸ್ ವ್ಯವಹರಣೆಗಳಲ್ಲಿನ ನನ್ನ ಬಗ್ಗೆ ಹಾಜರಾಗಿ ವ್ಯವಹರಿಸುವರೆಯೂ ಮತ್ತು ಕೋರ್ಟಿನಲ್ಲಿ ನನ್ನ ಕಡೆಯಿಂದ ಹಾಜರಾದ ದಸ್ತಾವೇಜುಗಳನ್ನು ವಾಪಸ್ ಪಡಕೊಳ್ಳುವರೆಯೂ ವ ಸದರಿ ವ್ಯಾಜ್ಯ ಯಾ ವ್ಯವಹರಣೆಯಲ್ಲಿ ನನಗೆ ಬರತಕ್ಕ ಹಣಗಳನ್ನು ಪಡಕೊಳ್ಳುವರೆಯೂ ನಿಮಗೆ ನನ್ನ ಬಗ್ಗೆ ವಕೀಲರಾಗಿ ನೇಮಿಸಿ ಈ ಮೂಲಕ ಪೂರ್ಣ ಅಧಿಕಾರ ಕೊಟ್ಟಿದೇನೆ ಎಂತ ನನ್ನ ಕೈವಪ್ಪಿತ ಹಾಕಿ ಬರಕೊಟ್ಟ ವಕಾಲತ್ ನಾಮೆ.

Mr. M. Narayana Shetty, Advocate, Mangalore

COURT FEE ONE RUPEE INDIA

Accepted

6/2/1933.

Vishwanatha
Advocate.

ಪಿ. ನಾರಾಯಣ ಶೆಟ್ಟಿ
ಪಿ. ಎಚ್.
10.2.33

ADDRESS FOR SERVICE OF THE SAID VAKIL IS

ಈ ವಕಾಲತು ಬರಕೊಂಡ ಮೇಲೆ ಹೆಸರು ಕಾಣಿಸಿದವರಿಗೆ ಅವರಿಗೆ ತಿಳಿಯುವ ಕನ್ನಡ ಭಾಷೆಯಲ್ಲಿ ಓದಿ ಹೇಳಿದಲ್ಲಿ ಸರಿ ಉಂಟೆಂತ ನನ್ನ ಮುಂದೆ ಒಪ್ಪಿ ದೃಢಪಡಿಸಿ ಇದಕ್ಕೆ ದಸ್ತತು ಮಾಡಿದ ತಾರೀಕು 10. 2. 33.

Executants
President of Taluk Board, Karkal
Principal

Pleader.

To,

The Collector,

SOUTH KANARA.

1. K. Vittal Shetty,) nephews of Kodethur)
) Ramanna Shetty, in)
2. K. Kunhappa Shetty,) Mennabettu village,) Petrs.
Mangalore Taluk. (

The petitioners above named beg to submit as follows:-

1. That this petition relates to the potailship of Boluwai village of Karkal Taluk.

2. That they have learnt that the Honourable Board of Revenue, Madras has proposed to cancel the appointment of their cousin B. Narayana Shetty, to the Boluwai potailship, and has instructed the Collector to decide the matter by a fresh inquiry, and that Narayana Shetty has been asked to show cause why the proposed order by the Board should not issue.

3. That they have had the benefit of reading the explanation submitted today by Narayana Shetty in that connection, and that they are in full agreement with what has been represented therein.

4. However, if Narayana Shetty cannot be retained as the potail, the petitioners beg to urge their claims in regard to their potailship.

5. Both of them are the direct nephews of the last holder Thimmayya Shetty being the children of his direct elder sister Venkamma Shedthi. While Padmanabha Shetty the contesting claimant is a junior son of Anthakke Shedthi, the younger sister of Thimmayya Shetty.

6 Of these, Vittal Shetty, is the senior most, Kunhappa Shetty is the next to him in age, while Padmanabha Shetty is the junior most.

7. It may also be noted that in the last inquiry Vittal Shetty was examined orally by the Sub Collector, Coondapoor, found fit for the job, and actually appointed.

8. The Collector cancelled the appointment without notice o him, but he did not take any further step as he realised the njustice of depriving his cousin Narayana Shetty of the potail-hip that should equitably be his.

9. That Padmanabha Shetty should not strive for this potail-ship is obvious from the fact that his direct elder brother Maha-bala Shetty, is actually holding the potailship of Mennabettu village.

10. In any case, Padmanabha Shetty's claim for potailship in Beluwai village can be ~~xxxxxxx~~ considered if at all, only after the claims of the petitioners who are admittedly senior to him in age are satisfied.

The petitioners therefore pray that if the matter of this potailship is to be reopened Vittal Shetty may be appointed to the potailship or if that is not possible the potailship may be conferred upon Kunhappa Shetty.

M A N G A L O R E,
9th February '33.

K. Vittal Shetty Nephew of Koti Shetty
2nd Witness
K. Sanjiva alais Kunhappa Shetty Nephew of Koti Shetty Kodethur

P E T I T I O N E R S.

B Ramaya Pai
Cl. for Petrs

55

Petr. ಕಡೆ ವಕಾಲತ್‌ನಾಮೆ.

(1908ನೇ ಇಸವಿ Vನೇ ಆಕ್ಟಿನ 3ನೇ ಆರ್ಡರ್ 4ನೇ ರೂಲ್ ವ ಸಿವಿಲ್ ರೂಲ್ಸ್ ಆಫ್ ಪ್ರೆಕ್ಟೀಸಿನ 276 A ರೂಲ್ ಪ್ರಕಾರ.)

ದಕ್ಷಿಣ ಕನ್ನಡಾ Collector ———— ಕೋರ್ಟಿನಲ್ಲಿ.

ನಂಬ್ರ ——— 1933.

K. Vittal Shetty & Another — Petrs.

ಮತ್ತು

ಇವರೊಳಗೆ

We the undersigned petitioners, K. Vittal Shetty & K. Kunhappa Shetty, Nephews of K. Ramanna Shetty, in Menhalettu village, Mangalore Tq.

ದಫ್ತೆ ಡಿಸ್ಟ್ರಿಕ್ಟ್ I ಗ್ರೇಡ್ ಪ್ಲೀಡರ್ ಮ. ರಾ. B. Ramaya Punja Avl., B.A.B.L., Vakil, Mangalore

ಮೇಲ್ಕಂಡ ವ್ಯವಹರಣೆಯಲ್ಲಿ ನ ಳ್ಳೆ ಕಡೆಯಿಂದ ನಕೀಲರಾಗಿ ನೇಮಿಸಿ, ನ ಳ್ಳೆ ಕಡೆಯಿಂದ ಸಮಸ್ತ ವ್ಯವಹರಣೆ ನಡಿಸಲಿಕ್ಕೂ, ಅದರಲ್ಲಿ ಉಂಟಾಗುವ ಯಾವದೊಂದು ಹುಕುಮಿನ ವ ಡಿಕ್ರಿಯ ಅಮಲ್‌ಜ್ಯಾರಿ ನಡಿಸಲಿಕ್ಕೂ, ಅಂಥಾ ಹುಕುಮುಗಳು ವ ಡಿಕ್ರಿಗಳು ಪೂರ್ಣ ಸಮಾಧಾನವಾಗುವ ವರೇಗೆ ಎಲ್ಲಾ ವಿಧದ ವ್ಯವಹರಣೆಗಳನ್ನು ನ ಳ್ಳೆ ಕಡೆಯಿಂದ ಹಾಜರಾಗಿ ವ್ಯವಹರಿಸಲಿಕ್ಕೂ, ನ ಳ್ಳೆ ಕಡೆಯಿಂದ ದಸ್ತಾವೇಜುಗಳನ್ನು ವ ನ ಳ್ಳಿ ಗೆ ಬರತಕ್ಕ ಹಣಗಳನ್ನು ಪಡ ಕೊಳ್ಳುವರೆಯೂ ಈ ಮೂಲಕ ಪೂರ್ಣ ಅಧಿಕಾರ ಕೊಟ್ಟಿರುತ್ತೇವೆ.

ತಾ. 10 ನೇ Feb 1933. ನೇ ಇಸವಿ.

Accepted

B Ramaya Punja

10/2/1933.

K. Vittal Shetty Nephew of Koti Shetty Kudu

K. Sanjiva Alais Kunhappa Shetty — Nephew of Koti Sh

Kodethur —

Address for service:

B.R Punja

Vakil

Mangalore

ಈ ವಕಾಲತು ಬರಕೊಂಡ ಮೇಲೆ ಹೆಸರು ಕಾಣಿಸಿದವ

ಇದನ್ನು ದೆಸ್ತೆತು ಮಾಡಿ ನನ್ನ ಮುಂದೆ ಒಪ್ಪಿರುತ್ತಾರೆ. ತಾ. 10. 2. 1933.

Ramachandra

Registrar Dist. Court

Mangalore

R. F. XXII-A-19—23,004—15-8-32 (

Subject.

FOR MEMBER. [illegible] - (South Kanara) - Karka: Tk - Belvai vge - Headman - Appointments. Padmanabha Shetty Appeal -

READ AGAIN B. P. No. _____ . dated _____ 193

" " " _____ , " _____ 193

Register No. ___ , From the A 793/33 p/p No. 33-35 ~~Ed~~, dated Q 193

" " _____ , " " _____ , " _____ , " _____ 193

" " _____ , " " _____ , " _____ , " _____ 193 .

~~RESOLUTION.~~ Refee A 3686/32/2 Q 16.3.33. No. _____ dated _____ 193

The Collector is requested to send English translations of the statements at pages 17-18; 29-33; 37-38; 43-46 to 48-49 and 91-95 & 107 of the Coondapur Sub Collector's R Dis 887-32 dt. 3-4-32 and also of any other material vernacular statements which deal with the present case contained in the other records submitted by him

K.S.
14.3.33
for 15332

R. Collector 16.4.33

DESPATCHED
18 MAR 1933

TO
The Collector of South Kanara
with records returned
to be returned with reply

(R) List at p 35 of

C/C 3-8-0
enl

A 953

BEFORE THE BOARD OF COMMISSIONERS LAND REVENUE SETTLEMENT, CHEPAUK, MADRAS.

B. Narayana Shetty .. Petr. (Respt.)

Vs.

Padmanabha Shetty .. C-Petr. (Applt.).

Whereas the petitioner has been asked to show cause in Board's Refemence No. 3686/32-1, dated 11-1-1933, why his appointment as permanent patel of Belwai Village, Karkal Taluk, South Kanara District, should not be set aside. the petitioner in furtherance of his submission to the Collector of South Kanara, dated, 9th February, 1933, begs to state as follows:-

1. That the petitioner and the counter-petitioner are members of an un-divided Aliyasanthana family known as the Puttigai Guttu; the members of the said family hold the patelship of 7 villages, Viz., Puttigae, Belwai, Thodar, Paladakka, Menabettu, Koochoor, and Badaga Edappadavu, in which the said family owns large landed properties.

2. The patelship of the said villages are held by members of different branches of the aforesaid undivided family.

3. That, from among the various branches of the family, the branch of the counter-petitioner lives

permanently

permanently in Menabettu Village of Mangalore Taluk, of which Mahabala Shetty, the elder brother of the counter-petitioner, Padmanabha Shetty, is the permanent patel.

4. That the counter-petitioner, Padmanabha Shetty, who is living along with his brother in Menabettu Village, will automatically succeed both in law and in accordance with the customary practice in the family to the patelship of Menabettu Village.

5. That in view of the fact that the counter-petitioner lives permanently in Menabettu Village together with the circumstance that his brother, Mahabala Shetty the present patel of Menabettu Village, has filed a written statement before the Revenue Divisional Officer, Coondapoor, in the course of the preliminary inquiry waiving his claim, if any, to the patelship of Belwai Village situated in Karkal Taluk, the counter-petitioner's claim to the patelship of Belwai Village is far-fetched and highly speculative.

6. That on a careful perusal of the copy of the Geneological Table of the family appended hereunder, will bear out the force of the petitioner's claim to the said patelship, as the seniormost qualified member of the family.

7. That after the death of Chinnayya Shetty, Thimmayya Shetty, the last permanent patel, succeeded to

the

the said office inspite of the fact that there were persons who were nearer in blood to the said Thimmayya Shetty, in accordance with the family custom that the senior male member should hold the patelship.

8. That if nearness of blood is the only criterion by which the patelship ought to devolve, it ought to have necessarily been held by Odipu Shetty, the direct uncle of the present petitioner, in the event of which the present petitioner's claim to the present patelship would be superior to the claim of any other member of the family, in any view of the case that the Board might be pleased to take.

9. In accordance with the family custom and also in view of the fact that Thimmayya Shetty had his permanent residence in Belwai Village in the family house, Thimmayya Shetty was appointed permanent patel.

10. That the petitioner's branch is the only branch in the family that has its permanent residence at Belwai Village enjoying the family properties situated therein.

11. That even during the life-time of Thimmayya Shetty, the present petitioner had acted several times and has an unblemished record of service extending over six years.

12. That the petitioner being the only qualified member of the family to hold the patelship as and when

the

the present permanent vacancy arose, and he being the only person having his residence in the said Village are but necessary considerations for establishing his superior claim to the said patelship

13. As and when the succession re-opens both under law and on equitable grounds as well, it has been the consistant policy of this Honourable Board to appoint the best qualified member of the family to the patelship, irrespective of nearness of blood relationship save in the case of minors.

14. That in pursuance of the family custom and also in view of the fact that the present petitioner is the only qualified person, one Vittal Shetty who happens to be the seniormost direct nephew of the last incumbent, has given his consent in the course of the preliminary inquiry for the appointment of the present petitioner as patel of Belwai Village.

15. That in any event, the present counter-petitioner, Padmanabha Shetty, has no claim to the patelship in the face of the superior claims of (1) Vittal Shetty and (2) his brother Kunjappa Shetty, who are both seniors and better qualified than the present counter-petitioner.

16. That the counter-petitioner being an unqualified hand having no residence of his own at Belwai Village, together with the fact that he is consumptive, will not be in a position to discharge the duties of the

Village

Village Headman satisfactorily, and it is more likely that he would eventually jeopardise the interests of the family.

17. That in view of the fact that the counter-petitioner, Padmanabha Shetty, is the lawful, legal heir to the patelship of Menabettu Village, his present claim, if any to the patelship of Belwai Village, if not to be waived, would create a position that would entitle him eventually to two patelships, in two different villages in two different Taluks.

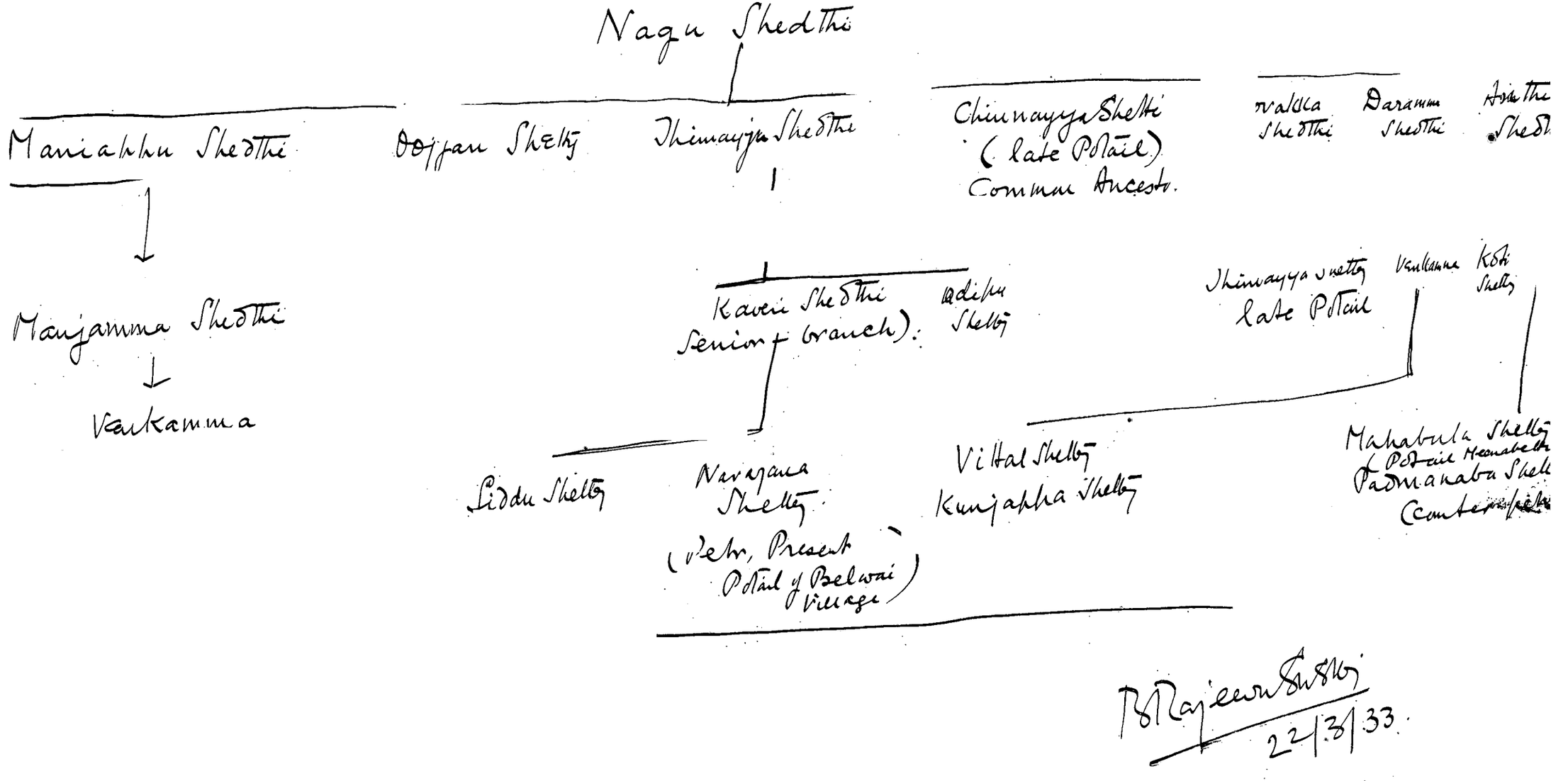
18. Besides, the branch of the counter-petitioner will aggranside to itself all the rights of the family agreeably to the prejudice of the other branches of the family: even on grounds of public policy, it would not be desirable to appoint two direct brothers as permanent potails of the two villages-

19. For reasons stated above, the petitioner prays that this Honourable Board may be pleased to refrain from interfering with the Order of the Collector of South Kanara appointing the present petitioner as the permanent patel of Belwai Village, for which act of benevolence, the petitioner will ever be grateful.

ವಿ. ಪದ್ಮನಾಭ ಶೆಟ್ಟಿ

Petitioner.

16. 3. 33.



P S Rajeeva Shetty
22/3/33

BEFORE THE BOARD OF COMMIS-
SIONERS, LAND REVENUE SET-
TLEMENT, CHEPAUK, MADRAS.

R. Narayana Shetty .. Petr.

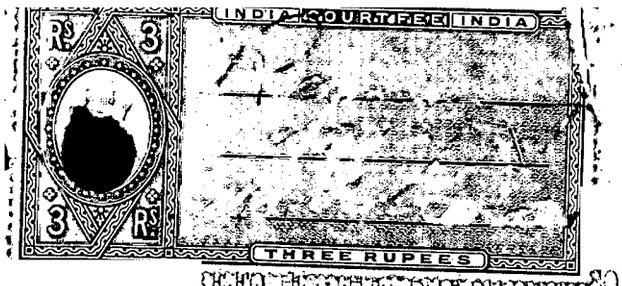
Vs.

Padmanabha Shetty C-Petr.

PETITION OF NARAYANA SHETTY

Mr. B. Rajeeva Shetty,

Counsel for petitioner.



BEFORE THE BOARD OF COMMISSIONERS, LAND REVENUE SETTLEMENT &c., CHEPAU MADRAS.

~~IN THE HIGH COURT OF JUDICATURE AT MADRAS.~~

B. Narayana Shetty. Petr. (Respt.) ~~Appellant~~

Padmanabha Shetty C. ~~Petitioner~~ (Applt. ~~Respondent~~)

I, B. Narayana Shetty.

~~Appellant Respondent~~ Petitioner in the above ~~Petition~~ do hereby appoint and retain Mr. B. Rajeeva Shetty, Advocate of the High Court, to appear for me in the above ~~Appeal~~ ~~Petition~~ and to conduct and prosecute (defend) the same and all proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein including all applications for return of documents or the receipt of any moneys that may be payable to me in the said ~~Petition~~ and also in applications for review in appeals under section 15 of the Letters Patent and in applications for leave to appeal to His Majesty in Council

B. Narayana Shetty

I certify that the contents of this vakalat were read out and explained in my presence to the said executant who appeared perfectly to understand the same and made his, her, their signature mark in my presence.

Executed before me this 16th day of March 1933.

Adv. B. Rajeeva Shetty
16. 3. 33

The address for service of the said Advocate is
116. Armenian St., G. T. Madras

ACCEPTED.

B. Rajeeva Shetty
22/4/33

A.S(L.R) **Subject.** 71 R. F. XXII-A-19—28,004—15-3-32 (6)

FOR MEMBER. Village Officers - (South Kanara) - Karkal Tk - Belmai Vge - Headman - Appointment Padmanabha Shetty - Appeal

READ AGAIN B. P. No. _____, dated _____ 193

" " " _____, " _____ 193

READ ALSO :—

Register No. _____, From the Bdi's Ref A 3686/32/1 Q 11-1-33 pp 29-31 cf Q, No. _____, dated _____ 193
A 793/33 pp. 33-35 cf Q

" " _____, " " Bdi's Ref A 3686/32/2 Q, 16.3.33, p " 57 cf Q 193
A 953/33 pp 59-63 cf Q.

" " _____, " " _____, " _____ 193

RESOLUTION. Refer A 3686/32/3.Q 24.3.33. No. _____ dated _____ 193

forwarded to the Collector of South Kanara for any remarks which he may wish to add in continuation of his report read above

pp 33-35 cf

K.S. 23.3.33

24-3-33

10

The Collector of South Kanara with the petition in original (to be returned with reply)

pp 57-70 cf.

R. Collector 24. 4. 33

DESPATCHED 27 APR 1933

K.V.S/S.P

L. Dis. 1492--33.

A1135

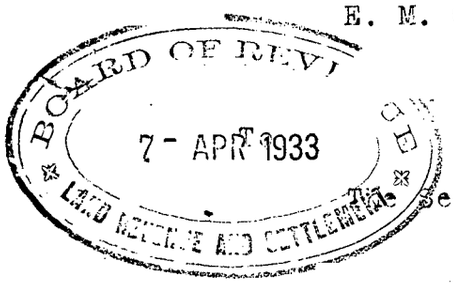
South Kanara Collector's Office,

Camp: Puttur, dated 2nd April 1933.

From

E. M. Gawne, Esq, I.C.S.,

Collector of South Kanara.



The Secretary to the Board,

Land Revenue & Settlement,

M a d r a s.

S i r,

Village Officers-- Headman--Karkal Taluk--Beluvai Village --Appointment--Padmanabha Shetty--Appeal.

---

1. Ref: Board's Ref. No.A3686-32-2 dated 16th March 1933.
2. ---------do------3686--32--3, dated 24th March 1933.

English translations of the statements referred to in the Board's first reference read above are enclosed. There are no other material vernacular statements in the other records which deal with the present case.

The petition received with the Board's second reference noted above contains no new grounds to be commented upon. It is on record that the members of the appellant's branch do not live in Beluvai village, that counter-petitioner Narayana Shetty lives permanently in the village, that he (counter-petitioner) is the only qualified man among the contending parties and that he has acted off and on from 1925 and continuously after the death of the last holder.

2. The records noted in the margin are enclosed.

1. Petition of P.Narayana Shetty received from the Board.
2. This office D.Dis. 5914--32.
3. Coondapur Sub Collr's R.Dis. 887--32.
4. --do-- L.Dis. 4341--32.
5. --do-- D.Dis. 7590--30
6. Karkal Tansildar's L.Dis. 5482--32.
7. L.Dis. 6421-32.
8. Chalan dated 27.3.32 for Rs.64-11-8
9. Geneological table in English.
10. --do-- received from the Board.

Your obedient servant,

Collector.

Statement of Koti Shetty.

Page 17. (7)

Statement dated 14th July 1931 of Koti Shetty, uterine younger brother of deceased Timmaya Shetty late permanent potel of Beluvai village, residing in Kondemula village recorded by the Shanbhogue of Nadugodu Tarf.

Perused the genealogical table prepared in connection with the enquiry relating to the appointment in succession to the deceased Timmaya Shetty, permanent potel of Beluvai village Karkal Taluk. It is correct so far as it relates to our branch As Timmaya Shetty was the last permanent potel, we, the childre of Poovakke Shedthy and our heirs are the rightful claimants and not the persons belonging to the elder and younger sisters of Poovakke Shedthy and they have no right whatever to the potelship. It is not possible for me to take up the potel's post myself. I have no objection to the post being [illegible]ed permanently on ~~my~~ any one of my nephews.

Heard it read over to me; correct according to my dictation.

Sd/- Koti Shetty.

Shanbhogue's report.

Page 18. (7)

Nadugodu Shanbhogue's report No -- dated 14-7-31.

With reference to the order enclosed the statement I have obtained from Koti Shetty, the younger brother of decease Timmaya Shetty, the permanent potel of Beluvai is enclosed together with the connected records. Of the remaining important heirs, two persons Manaoala Shetty and Vittala

Shetty are the eldest of the male heirs in the two branches. They have been telling me that they would give their statements before me but now they say that they do not and that they would appear before the Tahsildar and give their ---- statements if notices are issued to them. Unless their --- statements are taken, the remaining heirs of their branches refuse to give their statements.. Hence I have not obtained their statements.

Your most obedient servant,

Sd/- P. Narayana Rao.

Statement of Mahabala Shetty.

Page 2

Statement dated 17th August 1951 of Mahabala Shetty, nephew of the deceased permanent potel of Beluvai shown in th genealogical table, recorded by the Revenue Inspector, Mulki.

I perused the genealogical table and the connected records prepared in connection with the enquiry relating to the appointment in succession to the deceased Timmaya Shetty, the permanent potel of Beluvai village. It is correct so far as it relates to our branch. As Timmaya Shetty was the last permanent potel, we who belong to his branch are alone entitl the others shown in the genealogical table who are heirs of branches of our grandmother Poovakke Shedthy's elder and ---- younger sisters have no right whatever. Of those who belong to our branch, Timmaya Shetty's younger brother, Koti Shetty, uncle, though he is the best entitled for the post, says that it is not possible for him to take up the office of potel. Though I am the eldest among the remaining male heirs, I have no objection to the appointment of either Vittal Shetty or

Kunjappa Shetty, the sons of my mother's elder sister, as I am the permanent Potel of Mennabettu village. If it is not possible for them to take up the office, my younger brother Padmanabha Shetty may be appointed as permanent potel. He has read up to IV Form in the Canara High School, Mangalore. He has not appeared for the potel's special test examination. My submission is that he may be appointed as permanent potel subject to his passing the examination later on. I do not agree to the appointment of ~~any~~ (any) other person as potel.

Read over and found it correct according to my dictation.

Sd/- K. M. Shetty,
Potel of Mennabettu,
17-8-31.

Statement of Padmanabha Shetty.

Page 31. (7)

Statement dated 17th August 1931 of Padmanabha Shetty, son of Anthakke Shedthy, residing in Mennabettu village recorded by the Revenue Inspector. Mulky.

Perused the records and enclosures prepared in connecfion with the enquiry relating to the appointment in succession to my uncle, the deceased Timmaya Shetty, the permanent potel of Beluvai. As my uncle Timmaya Shetty was the last permanent potel, we who belong to his branch, alone are the rightful claimants to the potel's post. Those who belong to the other branches have no right whatever. As my elder brother Mahabala Shetty is the potel of Mennabettu village and my uncle Koti Shetty states that it is not possible for him to take up the office, I have no objection to the appointment of either Vittal Shetty or Kunjappa

Shetty, sons of my mother's elder sister. If both of them don't take up the job, my submission is that I alone and not any other pe___n should be appointed as permanent potel. I have read up to IV Form in the Canara High School. But I have not appeared for the potel's test. I may be appointed as permanent potel subject to the condition of passing it later on. My younger brother Sridhara Shetty is in the Sri Rama Krishna students' Home, Mangalore. Heard it read over, correct.

Sd/- Illegible.

Statement of Vittal Shetty.

Page 33. (7)

Statement dated 17th August 1931 of Vittal Shetty, nephew of Timmaya Shetty recorded by the Revenue Inspector, Mulk...

Perused the records and enclosures prepared in connection with the enquiry relating to the appointment in succession to the deceased Timmaya Shetty, the permanent potel of Beluvai village. The genealogical table is correct so far as it relates to our branch. As the Potailship of Belvai village was confirmed in the name of Thimmaya Shetty our branch alone has the right to the potailship; the other branches have no right whatever. As among the members of our branch, my uncle Koti Shetty expresses his inability to take up the potel's post and as Mahabala Shetty the son of my mother's younger sister, is the potel of Mennabettu village, I pray that I may be appointed as the permanent potel of Beluvai village. I appeared for the S.S.L.C. examination from the St. Aloysius' College, Mangalore. I did not appear for the potels' test. I may be appointed potel subject to my passing the Potels' tests.

Read over, correct, Sd/- K.V.Shetty.

Read over and admitted to be correct. Sd/- B.Shiva Rama,
Revenue Inspector,
17-8-31.

(True translation).

Statement of Sridhara Shetty.

Pages 37 & 38. (7)

Statement dated 30th September 1931 of Sridhara Shetty, son of Anthakke Shedthi, Rama Krishna Students' Home, Kodialbail, recorded by the Shanbhogue of Kodialbail.

******

Perused all the records sent with order No.14474-31 from the Taluk office, Mangalore and prepared in connection with the enquiry relating to the appointment in succession to the deceased Timmaya Shetty, my uncle and the last permanent potel of Belvai village. As the Potailship of Belvai village was confirmed in the name of my uncle Timmaya Shetty, we alone belonging to his branch have a right to the potelship; those of the other branches have no right whatever. In our branch as my elder brother Mahabala Shetty is the potel of Mennabettu village and my uncle Koti Shetty expresses his inability to take up the post, I have no objection to the appointment of either Vittal Shetty or Kunjappa Shetty, sons of my mother's elder sister. If both of them do not want the post or if they are not appointed, my elder uterine brother Padmanabha Shetty and not any other should be appointed permanently. If the above named three persons are not appointed permanently, my submission is that I may be appointed as permanent potel. I am now reading in the S.S.L.C. class in the Canara High School. I have not passed the Potails' ---- Tests. My prayer is also that I may be permanently appointed subject to my passing the test in future.

Read over. correct.

(Sd.) K. Sridhara Shetty,
30.9.1931.

(Sd.) Shanbhogue Shitarama.

(True Translation)

N.Ref.I.R.210/41.

To the Shanbhogue of Mennabettu.

Please obtain the statements of Kunjappa Shetty and Sridhara Shetty who have not been examined and resubmit the records.

(Sd.) B. Shiva Ram,
Revenue Inspector
28.8.1931.

******

Statement dated 1st September 1931 of Sanjiva alias Kunhappa Shetty, nephew of Ramanna Shetty, Kondemula village. recorded by the Shanbhogue of Nadugodu.

******

Perused all the records and enclosures prepared in connection with the enquiry relating to the appointment in succession to the deceased Timmaya Shetty, the last permanent potel of Belvai village. In his place the rightful heir, Vittal Shetty, my elder brother, may be appointed as permanent potel of Belvai village. Read over, correct according to my dictation.

(Sd.) K. Sanjiva
alias Kunhappa Shetty.

******

No.163/1.9.1931.

Nadugodu Shanbhogue's report.

As ordered I have obtained the statement of Sanjiva alias Kunhappa Shetty. As Sridhara Shetty is in the Sri Ramakrishna Students' Home in Mangalore, his statement may be obtained through the Shanbhogue of Kodialbail.

Your most obedient serv

(Sd.) P.Narayana Rao,
Shanbhogue
1.9.1931.

Pages 45 to 49. (7)

Statement dated 28th November 1931 of B. Narayana Shetty, nephew of the deceased permanent potel Timmaya Shetty and acting potel of Belvai village recorded by the Revenue Inspector, Mudabidri.

******

Perused all the connected records prepared in connection with the filling up of the permanent vacancy of Belvai Potailship. Perused the petitions submitted by me with reference to that permanent appointment. These petitions were submitted by me. Perused the genealogical table enclos to the Taluk Order N.Ref.No.A3.3007-31. It is correct. Ou family is undivided and governed by the Aliyasantana law of succession. Prior to the deceased potel, Timmaya Shetty, my grandfather Chinnaya Shetty marked B in the table was the potel. After him, his elder sister Timmaju Shedthi's son Vodipu Shetty No.2 in the table, and Ramanna Shetty and ----- Muthaya Shetty, the sons of Poovakke Shedthi, sister of ----- Chinnaya Shetty and marked C in the table, being the elder male members in the family, at least one of the three should have been appointed as permanent potel. Of these three as Vodipu Shetty was in Tenkamijar village and Ramanna Shetty and Muthaya Shetty were permanently residing in Kudethoor village, Timmaya Shetty who was residing in the village, though a junior member was appointed as permanent potel The potelship of Belvai village belongs to our whole family descending fro.. ..gu Shedthi shown in the genealogical table prepared in the case. It does not belong to the exclusive right of any particular branch of our family. The eldest male member of all the branches of the whole family has to be appointed. Therefore among the candidates belonging to our family for the post, I, being the eldest male member of the family, am best entitled in every way to get the post. Of the living male heirs No.1 Vodipu Shetty is old and No.2 Koti Shetty has expressed his inability to accept the post and is living in Kudethur village as it is not possible for him to reside in Belvai village. Though No.3 Siddu Shetty is resid-

ing in the village, I understand that he will not object to my being appointed. Out of the remaining candidates, I am the eldest and the best entitled and the holder of a certificate of having passed the examination. Having also acted as potel off and on during the last five or six years in place of Timmaya Shetty, I have gained experience of the village and of the work. The statement of Mahabala Shetty and others, children of my aunt, No.5 in the table, that the branch of Timmaya Shetty alone has a right to the potelship of Belvai and not any other branch is wholly unjust. Not just. Because the potelship was permanently conferred on Timmaya Shetty, the family as a whole does not lose its right. Mahabala Shetty must have given this novel sort of statement in order to dupe this just right of the family and to establish the right of his own branch to the potelship. Though Vittal Shetty, son of my aunt No.3 in the table, has given a statement on the lines of Mahabala Shetty that he (Vittal Shetty) should be appointed as potel according to the right devolved on his branch, he has given me a verbal promise that he will not raise any objection if I were appointed as potel. He knows that the potelship belongs to the whole family descending from Nagu Shedthi. He may give again another statement to that effect. Mahabala Shetty is the permanent potel of Mennabettu village, Mangalore Taluk, which also belongs to one family. Besides, Mahabala Shetty is junior to me in age. When I am older in age, the claim put forward by Mahabala Shetty and his minor younger brother Padmanabha Shetty is unjust. Vittal Shetty, Kunhappa Shetty and Padmanabha Shetty are permanently living in Mennabettu and Kondemula villages of Mangalore Taluk and they have no residence in Beluvai village. Not one of them has passed in the Potels' test. That they have not passed the examination is evident from the statements of each of them filed in this case. That they have no residence in Beluvai village may also come to your Honour's notice. Except the three persons. Nos.1 Vodipu Shetty, 2 Koti Shetty, 3 Siddu Shetty, in the table, I am the eldest among the remaining candidates for the post; I have passed the Potels' test and gained

experience by acting as potel off and on for about 5 or 6 years and also I am acting as potel after the death of Timmaya Shetty and as such, my prayer is that I may be appointed as permanent potel of Beluvai village. I have produced this day before the Revenue Inspector two certificates for having passed the examination and 14 orders from the Taluk office regarding my appointment as acting potel from 1925 up to the current year. From the genealogical table prepared in the case and the certificates and the Taluk orders produced by me, it may appear to your Honour that I am the man best entitled to get the potelship of Beluvai village. I therefore pray once again that the potelship may be conferred on me permanently. I need not dwell on my conduct, character and diligence in duty. I have full confidence that the Taluk Tahsildar and the Revenue Inspector will not fail to speak on my behalf in this matter. My family owns by hereditary right property paying an assessment of about Rs.700/-. My mother owns in her own name properties in Tenkamijar village paying an assessment of Rs.275/- and in Beluvai village paying an assessment of Rs.50/-.

Read over. Correct.

(Sd.) B. Narayana Shetty,
Potel.

****

Pages 91 & 92. (7)

Statement of Vittal Shetty.

Statement dated 4th December 1931 of Vittal Shetty, nephew of Kodetnur Guthu Koti Shetty of Kondemula village, Mangalore Taluk recorded by the Revenue Inspector, Mudabidri.

*****

Perused the records and the genealogical table prepared in connection with the filling up of the post of the permanent potel of Beluvai village. Though I had given a statement on 17.8.1931 before the Revenue Inspector, Mulki to the effect that it is --- correct and that I must be appointed to the post, I have no ---- objection to the post being permanently conferred on my elder -- cousin B. Narayana Shetti, as the potelship belongs to our family

in Nagu Shedthi's branch. Narayana Shetti is the eldest among the several candidates and the seniormost in point of age. He has gained good experience of the work by having acted off and on as potel during the last about 5 or 6 years both during the life time of Timmaya Shetty and after his death. He has also permanent residence in the village. If it is not possible to appoint him, I may, as already requested by me in my statement dated 17.8.31 before the Revenue Inspector, Kulki, be appointed as the permanent potel of the village. I do not consent to the appointment of any other person.

Read over. Correct.

(Sd.) K. V. Shetty.

****

Page 93. (7)

Statement of Vodipu Shetty.

Statement dated 26th December 1931 of Vodipu Shetty, nephew of Chinnaya Shetty, Beluvai village recorded by the Revenue Inspector, Mudabidri.

******

Perused the genealogical table prepared agreeably to Taluk N.Ref.A3-3007-31 in connection with the permanent potel's appointment in Belvai village. The table is correct. The potelship of Beluvai village belongs to Nagu Shedthi's branch of our family. We belong to an undivided family governed by Aliyasantana law of Succession. According to seniority, I should be appointed. I have not passed the potel's test. Of the members of our family, B. Narayana Shetty, the present acting potel, is the only man who has passed the test. I have no objection to B. Narayana Shetty being appointed as permanent potel. If other unqualified members are to be appointed, I may be appointed as potel as I am the seniormost in the family.

Heard it read over. Correct.

(Sd.) Vodipu Shetty

****

Page 95. (7)

Statement of Siddu Shetty.

Statement dated 26th December 1931 of Siddu Shetty, nephew

of Vodipu Shetty, Belvai village, recorded by the Revenue Inspector, Mudabidri.

******

Perused the genealogical table prepared agreeably to Taluk N.Ref.A3-3007-31 in connection with the permanent potel's appointment in Belvai village. The table is correct. The potelship of Beluvai village belongs to Nagu Shedthi's branch of our family. We belong to an undivided family governed by Aliyasantana law of Succession. If on ground of seniority Vodipu Shetty is not appointed as potel, I should be appointed. If it is to be conferred on a qualified hand, then No.9 is the eldest among the qualified. I have no objection to his being appointed as potel.

(Sd.) Siddu Shetty.

****

K&N 1.33.

Narayana Shetty

87 Draft for approval.

Subject.

Village Officers - (South Kanara) - Karkal Tk. Beluvai village - Headman - Appointment Padmanabha Shetty - Appeal - Remanded to Collr. for fresh enquiry.

---

pp 1-11 cf
pp 29-31 cf
pp 33-35 cf
p 57 cf
p 73 cf

A - 3686 (Q to petitioner only)
Board's Refce A-3686/32-1, d/11-1-33.
A - 793/33
Bd's Refce A-3686/32-2, d/16-3-33.
A - 1135/33

Resolution (Misc). 1616 & 10.6.33

pp 17-21 cf

This is an appeal from Padmanabha Shetty against the Collr's order D.Dis. 5914/; dated 9-8-1932. The Board has examined the records of the case. The last office holder

p 25 cf

Thimmayya Shetty died and the R.D.O. appointed

do.

Vittal Shetty the direct nephew after giving him the benefit of the oral test. His appoint-

pp 17-21 cf

ment was however cancelled by the Collector. One of the grounds ~~urged~~ for cancelling the R.D.O's order was that Narayana Shetty was next

p 19 cf

in the line of succession according to the Advocate General's opinion. From the genealo-

Flag (M)

gical tree submitted by the Collector, the Board observes that Vittal Shetty and Padmanabha Shetty are descendants of Thimmayya Shetty's mother ~~Pevukke~~ Poovakka Shedthy, while Narayana Shetty is the descendant of Thimmaju Shedthy sister of Pevukke, i.e., the

the descendant of the last office holder's grandmother. In accordance with the Advocate General's opinion, communicated to the Collr, with B.P. No. 71 Mis., dated 11-1-1926, the last holder's mother's descendants should be preferred to the descendants of ~~the~~ his grandmother. The Board therefore considers that Vittal Shetty and Padmanabha Shetty are nearer heirs (the former being the senior) of Thimmayya Shetty, ~~the last officer holder;~~ than is Narayana Shetty.

pp 69-70 of (P)

Flag (P)

2. When the R.D.O. appointed Vittal ~~Thimmayya~~ Shetty, the Board's appellant, Padmanabha Shetty, had no reason for claiming ~~grievance and therefore could not claim~~ the office before the R.D.O; ~~for the same reason there was no necessity~~ for him to appeal ~~for him to appeal~~ to the Collector against the R.D.O's ~~Collector's~~ order. When, however, Narayana Shetty, a more distant heir, was appointed by the Collector, Padmanabha Shetty had a cause of action and therefore appealed to the Board The fact that Vittal Shetty, the man appointed by the R.D.O., did not elect to move for the restoration of the R.D.O's order does not take away the appellant's right to appeal

3. The Board issued a notice to his Narayana Shetty to show cause why the Collr's order should not be cancelled. He contends that he should have been appointed to the office being the nearer heir of Vadiappu Shetty in order to rectify the ~~error made in~~ mistake made in appointing the last office holder, Thimmayya Shetty.

pp 29-31 of

p. 43 of

The

The Board is of opinion that the validity of Thimmayya Shetty's appointment cannot be questioned at this distance of time. The vacancy is one caused by the death of Thimmayya Shetty and only his heirs can have any claim to the office. The Board cannot take any action on the joint petition of Vittal Shetty and Kunhappa Shetty as they have not moved against the Collr's order. The contest therefore lies between Narayana Shetty and Padmanabha Shetty.

pp 51-53 of

4. Although the Village Officers in the South Kanara district are non-hereditary and non-statutory, appointments to such offices are made in accordance with the principles of succession laid down in the Aliyasantana Law and the principles of hereditary succession are followed closely. In those districts where the offices are hereditary, On the analogy of rules 24(a), 34(a) and 52 framed under Act III of 1895, Narayana Shetty should have impleaded Padmanabha Shetty and Kunhappa Shetty as respondents in his appeal to the Collector as they were nearer heirs than himself. Even if he failed to do so, the Collr. should have taken steps to give notices to such respondents and decided their claims. It does not appear that notices were issued to the heirs of Thimmayya Shetty. The Board therefore cancels the Collr's order D.Dis. 5914/32, dated 9-8-1932 and remands the case for a fresh enquiry in the light of the above remarks.

p. 875; 877 & 878 of B.S.O Vol. III

pp 17-21 of

5. The appellant is referred to the Collector for orders on his appeal.

To the Collr. of South Kanara, with records as per list retd.

Appellant's Advocate, M.R.Ry Lakkappa Rai, Madras, para 5. with enclosures returned.

Respondent's Advocate, M.R.Ry B. Rajeeva Chetty, Madras.

Note File

Subject :- Village Officers - (S. Kanara) - Karkal Tk - Belwai village - Headman - Appointment - Padmanabha Shetty - Appeal

A. 3686/32 pp 1-11 Cf

To A.S

Non hereditary and non statutory

2). Ordinarily no second appeal lies but as the appellant was not a party before the Collector this may be treated as an appeal following the precedent at (T). The appeal is in time.

PINF of B.P. 3161 Mis 27-10-32

(3). Thimmaya Shetty, (No 5-2 in (Q)) the last office holder died The Rev divl. officer appointed Vittal Shetty, No 164 in (Q) the direct nephew of the last office holder after giving him the benefit of the oral examination Against this appointment Narain Shetty, No 159 in (Q) appealed to the Collector, who cancelled the order of the Rev. divl. officer. The Board's petitn , No. 174 in (Q), another nephew of the last office holder moves the Board against the Collector's ord

p: 25 Cf

pp. 25-27 Cf.

(4). The appellants main contention

is that Narain Shetty is not the next heir in the line of succession. The Collector held that according to the Advocate General's opinion, the appellant before him was the next heir after Vittal Shetty. ~~This does not appear to be quite correct for the following reasons~~ p. 19 of

According to the Adv. General's opinion pp. 69-70 of (P)
we must first find the group to succeed and then select the eldest ~~member~~ member thereof. In selecting the groups preference should be given p. 69 of (P)
to the mother's ~~group~~ descendants first and next the grandmother's descendants should be considered. In the present case a translation of the relevant portion of the genealogical table p. 2 of (K)
is put up. From it, it is observed that Vittala Shetty and Padmanabha Shetty are descendants of Thimmayya Shetty's mother Pavurkke No 7: ie the last office holder's mother's descendants whereas Narayana Shetty is the descendant of Thimmamma Sister of Pavurkke ie the descendant of the ~~last~~ office holder's grandmother. So as observed by the Rev. Divl. Officer Vittala Shetty and Padmanabha Shetty

are nearer to Thimmaya Shetty than Narayana Shetty. If this were so the decision of the Rev. Civil Officer does not appear to be correct

p/p. 17-21 Ct

5). The Rev. Civil Officer is empowered to examine orally any candidate for an ~~village~~ office of headman if he is not a minor. It is not understood why the Collector objected to this. Appointment of a candidate subject to his taking up residence is also not objectionable. In the circumstances the Collector's interference does not appear to be justifiable

Rule 21 of Rules framed under the Act
p-874 of B.S.O. Vol III

6). It is also a point for consideration if the appellant can be appointed now. He has not stated that he is qualified. It has to be presumed that he is unqualified. In the B.P at (T) in a similar case the appeal was dismissed and a report was called from the Collector. In the present case also the appeal may be dismissed and it may be pointed out to the Collector that his interference with the order of the Rev. Civil Officer was wrong.

para 4 on p. 4 Ct

KS
19/12/32

The pedigree shows that the Appellant

[illegible] Resi [illegible] The Collector seem to have misunderstood the Board's Council's opinion (P). f 1
The appellant might have been appointed and subjected to unit test if he was not qualified. The respondent's para 12.
record does not seem to be good. As this is to be treated Rp 9-11 cf
as a first appeal records may be called for.

Ans 32 The petitioner did not [illegible] the
office before the Dist. officer. Result
shortly selected by the Dist. officer is according
to the Board's Council's opinion a nearer
chance to the last office holder than the
Counter-petitioner Narasimha Reddy - Nitta
Shetty did not challenge [illegible] selection
order. The petitioner so evidently not
qualified. The test is non-essentiary
The petition may be dismissed. The
collector may be informed that the new
grading [illegible] taken with his order so
not correct and para 12 of the Board's not advisable — others
may be communicated to him Rp 9-11 cf
I agree with A.

A/ [illegible]

Clearly contrary to
the Adv. fin's opinion a reference to be
allowed to stand. He must be told
that the Govt cannot approve it for the
reasons given in the O.M. & directed to
Consider the case afresh in the light of
these reasons.

A.M.S
3.1.33.

1/2

A.M.S
6.1.33

Draft
7-1-33

To A.S.

A.S.(L.R) | Draft submitted

K.S. 9/1/33 | 9/1/33

11-1-33.

A.S.(L.R). | To A.S.

The counter petitioner's statement and the joint petition of Vittal Shetty and Kenchappa Shetty referred to in para 5 of the Collector's report have not been received. They may be called for. Draft submitted for approval.

K.S. 10/3/33 | 10.3.33.

11-3-33.

A.S.(L.R). | To A.S.

The record of enquiry submitted by the Tahsildar, Karkal TK along with the recommendation roll contains the statements of the following persons.

(i) Kosi Shetti. pp 17-18 cf of (F).

(ii) Mahabala Shetti p 47 cf of (F)

(iii) Padmanabha Shetti pp 31 & 33 cf of (F)

(iv) Sridhara Shetti pp 37-38 cf of (F)

(v) Not known pp 45-49 cf of (F)

(vi) Not known probably pp 91-95 cf of (F)

The Tahsildar based his recommendations on the strength of these statements. It appears necessary for the Board to peruse the statements. So the Collector may be asked to submit translations of the statements Draft submitted for approval. p3-5 of (F).

K.S. 14.3.33

A 153/33 pp 29-6

To A.S.

This is a supplemental memo of objections from the Boards respondent. The records of the case are now with the Collector and the translations of certain vernacular statements are awaited. This petition may be forwarded to the Collector for offering any remarks which he may wish to add to report & pages 33-35 of Draft submit for approval

K.S. 23.3.33

Board Ref A 3686/32-1 dt 11-1-33 pp 29-30 of
A 793/33 pp 33-35 of
A 1135/33 p 73 of

Ad(LR)	To Ad
	The Collector has submitted
pp 41-47 of	the statements of the Contr petitioner
	Narayana Shetty and a joint
pp 51-53 of	petition from Vittal Shetty and
	Kunhappa Shetty. The main
	objections raised by Narayan Shetty
	to the issue of the proposed Board's
pp 41-47 of	order are —
	(1) That the appointment of
	Thimmappa Shetty after the
	death of Chimayya Shetty was
	wrong and that Vadipu Shetty
	should have been appointed
	after the death of Chimayya
	Shetty. He says that this
	mistake should be rectified
	now, and that he should be
	appointed to the post, being the
	direct nephew of Vadipu Shetty
	(2) That he passed the test
	and is fully qualified
	(3) That he has been acting
	in the post from 1925 onwards
	(4) That he is a resident of the Vill

there are no new grounds in his second petition Pp 59-63 of

As regards the first point it is submitted that the Contr-petitioner cannot question Thimmayya Shetty's appointment at this stage. Thimmayya Shetty was the last permanent holder of the office and when he died succession has to be traced from him but not from Chinnayya Shetty who held the office previously. In his view the objection that he should be appointed being the next heir of Kodipu Shetty falls to the ground. [illegible] to the Advocate's opinion was already pointed out at page 2 the note he is not the nearest heir to Thimmayya Shetty. P 63 of

The Collector's report is for perusal. He is of opinion that the Contr-petitioner was rightly appointed. In this connection the statement of Vittal Shetty dated 17-8-31, and the paper marked (A) in the statement of Narayana Shetty dated 28-11-31 Pp 33-35 of P 78 of P 82 of

and the Basement of Kittal

11 pp 44-46 of | Shetty dated 4-12-31 may be
perused Vittal Shetty has now put
in a petition to the Board along
pp 51-53 of | with his brother Kunhappa Shetty
that he should be appointed
to the post, if the Board did
not approve the appointment
of Narayana Shetty. From
this it is seen that Vittal
Shetty is changing his views very
often. It appears that no
action can be taken on his
petition, as he preferred no appeal
against the Collectors order.

The point for Consideration
is between Narayana Shetty on
the one hand who is qualified
pp 33-35 of | but not the nearest heir according
to the law of Succession, and
Padmanabha Shetty a nonentity
and an unqualified man
but the direct nephew of
the last pattedar on the other
hand. The being a case
of Headman's appointment
it is submitted, that it is not
necessary to pass the ~~the~~ test

as the RDO can examine him orally and appoint him if found fit.

For orders

The Appellant is not qualified under a Non-resident. In the peculiar circumstances of the case, it is doubtful if any interference is necessary. The Committee petition is qualified

Wednesday

The Coll. was asked in the Bd's proceedings p. 31 C.f. to examine Padmanabha Shetty - in pursuance of the Coll. has written for, both Bhandaris whether there was a Non-Local man who was available who is willing to give an oral test to an unqualified man for Headman post. The passing of a test presumes if the Headman is no better than the Non-Local man who possesses the requisite qualification to perform the duties of a Village Headman. The petitioner has not passed any test & so he is not qualified. The Coll. may therefore be directed to do so.

Adl 27.4.33.

Ins 3

If the Board's petitioner should examine the appellant before the RDO, should file before the Collector within the prescribed time an appeal against the RDO's order. I do not see why the Board should bother about him. Nor do I see any reason why the Board needs

in terms with the C's order unless the person appointed by the RDO rejected by the C has asked the Board to do so. The post is non hereditary non statutory nobody can claim it as of right. Please note briefly on this aspect & return

3 - MAY 1933

To A-S.

Member's query on pp. 10-11 Blf.

Though the village offices in the South Kanara district are non hereditary and non statut yet appointments to village office are made according to the principl of Aliya santhana law. If there is no member in the family of the last office holder entitled to succeed to the village office, then an outsider is selected. Unlike other non hereditary districts the registration of minors is allowed in the South Kanara Dt Vide B.P. 105 Mis. Dt 11-1-1001

This shows that the principles of hereditary succession are more closely follow

A-Mf 10/5.3/3

pp 5-8 of the Stock file put up below

in this district than in the other
non hereditary tracts.

K-8. The Rev Dist Officer appointed Vittal Shetty p 25 cf
4/5/33 after giving him the benefit of the one left
He claimed the Office himself. vide his Statement 17-8-1931 p 78 cf.
The Board's appellant had no objection to the
appointment of Vittal Shetty or his brother Kunheppa
Shetty; otherwise he wanted the Office for himself please see his statement 17-8-31. Vittal pp 77-78 cf.
Shetty was accordingly appointed on 3.4.32 p 28 cf
On 26.6.32 Narayan Shetty appealed to p 17 cf
Collector. Vittal Shetty had no objection to Narayana's pp 83-84 cf.
Shetty's appointment. Padmanabha Shetty (the
Board's appellant) had no grievance against the pp 77-78 cf
R.D.O's order. His objection was that he should have
been selected if Vittal Shetty was not
appointed His cause of action arose when the Collector pp 17-21 cf.
reversed the R.D.O's order appointing Vittal Shetty. p 25 cf
His petition to the Board has therefore been treated p 1 nf.
as a first appeal. ~~From~~
Vittal Shetty's petition to the Board claiming pp 51-53 cf
5.33 the Office again if Narayan Shetty cannot be retained
has been dealt with at page 9 nf from orders

Vittal Shetty & Padmanabha Shetty
are the maternal uncle of the Cash Officer Mr. Rao, the p-2 nf
former being the senior. When the R.D.O
appointed Vittal Shetty, the plaintiff Padmanabha
Shetty had no grievance & therefore did not
claim the Office before the R.D.O; nor for

the same reason, was there any need for him to appeal to the Collector agt the R. D.'s order. When Narayana Shetty, a more distant heir of the last holder was appointed by the Coll^r in Suppression of the R. D.'s order, the Pet^rs Padmanabha Shetty — a nearer heir of the last holder — appealed to the Bd against the Collector's order. The fact that Vittal Shetty, the man appointed by the R. D., did not appeal to the Bd for the restoration of the R. D.'s order, does not take away from the Pet^rs right to move the Bd in appeal. As, in the light of the Advocate General's opinion, Narayana Shetty is a necessary heir to the Bd's appellant, the Collector's order is liable to be set aside. The Bd held the view that the proper course for the Coll^r to adopt on the Bd's finding was to cancel the R. D.'s order and to direct the Coll^r to decide the case afresh in the light of the finding of the Bd on the question of undue influence exercised by Narayana Shetty over the deceased.

H 69-70 (P)

p. 4 29 & 31 cf

The Coll^r

may be asked to come on the 3rd inst
& keep it, before the Bd issues the proposed adv. pp. 29 to 41 ante

Cy
5-5-33

✓ agree with A.S. (S. Kanara is peculiar in this matter & I had myself to query the first case of from that district that I saw here.)

10.5.33

No 3.

If the post was actually hereditary how could the C's order be set aside & in whose instance? Would not the only man entitled to sue for the office in Udupi Shetty who has not objected to the C's order? Or could Govt sue?

13.5.33

SECY.
16 MAY 1933

To A.S.

Member's query above. In South Kanara district is a few villages non hereditary district. Vide B.S.O 156 (1). But as pointed out at pages 11 to 12 N the principles of hereditary successions are more

No 3
S
A.S. (L.R.)

p. 869 of B.S. Vol III

closedes followed in this district than in the other non hereditary districts. Claimants to these offices cannot obtain redress by the institution of suits under Act III of 1895. They are allowed a single appeal against departmental orders of appointment. Please see B.S.O. 156(3)

p 870 of B.S.O Vol III

second appeals to the Board were abolished in 1924. Vide ~~B.S.O.~~ correction slip

p 870 of B.S.O Vol III (2)

No 9 to B.S.O. 156 (3) introduced by B.P. 44 Press dt. 25-7-32. For the reasons explained on p/N.F. this is treated as an appeal against the Collector's order. For orders.

K.S.
16/5/33

17-5-33

Mr3 says "If the offin post were actually hereditary ~~would~~ could ": his whole note is based on that supposition. I'll answer his queries

17.5.33.

To A.S.

A.S (L.R.)

If the post were actually hereditary, a suit for the recovery of office would be pronounced for before the R.D.O. and the Collectors order could be cancelled by means of an appeal to the Board

Sections 13 and 23 of Act III of 1895 on pp 764 & 767 of Madras Code Vol II

against the suit decision. The appeal can be preferred by any of the parties aggrieved by the decision of the Collector and these parties will be the nearer heirs than the plaintiff who have to be impleaded by him under rule 24. A of the rules framed under Act III of 1895. p. 875 of B.S.O Vol III

Vittal Shetty is not the only person entitled to sue. Any heir near or remote of the last office holder (ie Timmayya Shetty) is entitled to sue in the 1st instance Padmanabha Shetty or Naraina Shetty being one of the heirs of Timmayya Shetty would also be entitled to sue if the post were hereditary.

If Vittal Shetty's appointment were taken to be a decision in a suit before the Rev. Divl. Officer, it is submitted that he need not implead Padmanabha Shetty or Narayana Shetty they being remoter heirs than himself. Then Narayana Shetty would have had no right of appeal. Even if he had been allowed to appeal he should have impleaded Padmanabha Shetty and

Kumbappa Shetty as parties as they were nearer heirs than Srinivas? If he had failed to do so the Collector could have directed him to do so under sec 34-A read with rule 52. The Collector should have given notice to such respondents and finally decided their claims. In the present case no notice has been given to Vittal Shetty or Padmanabha Shetty or to Kumbappa Shetty. The Collector's order was practically ex parte. In such cases in hereditary tracts the practice is to remand the case for retrial.

pp 877 & 878 BSO Vol III

K.S. 18/5/33 19533

22-5-33

S 25.5.33.

M3.

Then let me see a draft complying in this case with the principles underlying the practice in hereditary tracts.

26.5.33

SECY. 10 JUN 1933

M3. S. A.S. (L.R)

TO A.S.

Draft submitted

K.S. 30/5/33 31.533

26.33 1.6.33

1.6.33